

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
AND SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Holiday Inn-Brownstone
1707 Hillsborough Street
Raleigh, NC 27605**

Wednesday, October 17, 2007

Attending:

Commission for MH/DD/SAS Members:

Floyd McCullouch, Dr. Anna Marie Scheyett, Dr. Richard Brunstetter, Dorothy Rose Crawford, Pearl Finch, Mazie Fleetwood, Ann Forbes, George Jones, Martha Martinat, Pender McElroy, Connie Mele, Emily Moore, Carl Shantzis, Ed.D., CSAPC

Ex-Officio Committee Members:

Peggy Balak, Sally Cameron, Deby Dihoff, Bob Hedrick, Larry Pittman, Jennifer Munford, Mark Sullivan

Excused: Dr. William Sims, Jerry Ratley

Division Staff:

Steven Hairston, Denise Baker, Marta T. Hester, Andrea Borden, Susan Kelley, Dr. Michael Lancaster, Carol Donin, James Osberg, Glenda Stokes, Martha Lamb, Tracey Ginn, Cindy Koempel, Stuart Berde, Chris Phillips, Mabel McGlothlen, Rose Burnette, Jim Jarrard

Others:

Fred Woodard, Ashley Perkinson, Betty Gardner, Ken Wilson, Suzanne Walker, Louise G. Fisher, Paula Cox Fishman, Wrenn Rivenbark, Diane Pomper, Kathy Boyd, Jack Register, Virginia Price, Karen Salacki, John L. Crawford

Handouts:

Mailed Packet

- 1) October 17, 2007 Rules Committee Agenda
- 2) July 11, 2007 Draft Rules Committee Minutes
- 3) Proposed Adoption of 10A NCAC 26C .0700 – Provider Endorsement
- 4) Proposed Amendment of 10A NCAC 28F .0101 - Regions for Division Institutional Admissions
- 5) Proposed Amendment of 10A NCAC 27G .0504 – Client Rights Committee
- 6) Proposed Amendment of 10A NCAC 26D .0101 - .0103, .0507, .0703, .1001 - .1002 & .1004 – Criminal Justice
- 7) PDF Attachments (Additional handouts from the July 11, 2007 Rules Committee Meeting)

Additional Handouts:

- 1) NC Providers Council – Comments on Rules
- 2) Licensed Professional Counselors of North Carolina – Comments on Rules
- 3) Updated Version of 10A NCAC 26D .0103 – Criminal Justice Rules
- 4) Updated Version of 10A NCAC 26C .0700 – Provider Endorsement

Call to Order:

Floyd McCullough, Chairman, Rules Committee, called the meeting to order at 9:35 am. Mr. McCullough delivered the Invocation and issued the ethics reminder. Chairman McCullough continued with the introductions and welcomed everyone to the Rules Committee meeting.

Pender McElroy, Commission Chairman, introduced and welcomed Mark Sullivan, who was recently appointed as an Ex-Officio member of the Rules Committee. Mr. Sullivan is the Executive Director of the Mental Health Association of Orange County.

Approval of Minutes:

Mazie Fleetwood, Commission member, made a motion that the minutes be approved without any changes.

Upon motion, second and unanimous vote the Rules Committee approved the minutes of the July 17, 2007 Rules Committee meeting.

Staff Qualifications Workgroup

Dr. Michael Lancaster, NC DMH/DD/SAS, Chief, Clinical Policy, conducted a presentation on the efforts of the work group on Staff Qualifications. This work group is chaired by Dr. Lancaster with James Jarrard, Team Leader, DMH/DD/SAS Accountability Team. An outline of the points Dr. Lancaster made are listed below:

- the workgroup was developed by the Commission to look at changing the Staff Qualifications rules;
- the group was comprised of members of the Rules Committee and representatives from provider groups, consumer organizations, DMH/DD/SAS and the Local Management Entities (LMEs);
- the group felt strongly that one of its missions needed to be not so much making a new rule, but clarifying current rule;
- the clarification of the current rule evolved in three phases with the following issues addressed: 1) to what does “the population served” refer 2) what is “experience”, and 3) what is “supervision”;
- the rule change considered involves creating a “Licensed Professional” category and retooling the definitions for Qualified Professional and Associate Professional as needed; and
- a next step is creating rule to define competencies for the various professional levels in our system.

Dr. Lancaster stated that the work group plans to present rules regarding licensed professionals at the January meeting. The group will also look at issuing guidance in the form of an implementation bulletin. Mr. McElroy asked if Dr. Lancaster could speak to the substance abuse professionals’ involvement on the workgroup. Dr. Lancaster stated that Flo Stein, Starleen Scott-Robbins, and Tom Savage have been involved as representatives from the substance abuse professional arena. Dr. Scheyett asked that a copy of the clarification of the current rule be sent to the Commission members.

10A NCAC 28F .0101 – Proposed Amendment of Regions for Division Institutional Admissions

Carol Donin, DMH/DD/SAS, State Operated Services, and James Osberg, Chief, DMH/DD/SAS State Operated Services, presented the proposed amendment of Regions for Division Institutional Admissions. The intent of this rule is to have a region/catchment area for each state facility that does not split Local Management Entities (LMEs) across facility regions. The three region model also distributes the population demographics in an equitable way for each facility and minimizes geographical/logistical issues for individuals who need to access the services of state operated facilities. This is a Commission rule and presented to the Rules Committee for approval of a recommendation to the full Commission for publication of the proposed rule.

James Osberg responded to the following questions posed by the Commission:

- whether the rule allowed for longer admissions for populations including those with developmental disabilities and/or neuromedical concerns
- what is the proposed date for opening the Central Regional Hospital – March 1, 2008
- whether there are waiting lists for admissions to the psychiatric hospitals
- whether the pilot project for hospital use reduction yielded demonstrable results
- what was the funding amount devoted to the pilot project
- whether the state-wide bed capacity of the Central Regional Hospital is the same as it was for the current facilities
- whether a penalty would be imposed for LMEs who fail to comply with the bed day allocation plan
- whether the State solicited proposals from Wake Human Services
- whether implementation of this rule would impact admissions should the Central Regional Hospital fail to open as scheduled
- whether LMEs had been consulted in the amendment of this rule

Ann Rodriguez, Policy Analyst, NC Council of Community Programs, voiced the Council's support of the proposed amendment of this rule.

Upon motion, second and unanimous vote, the Rules Committee approved the proposed amendment of 10A NCAC 28F .0101 to be forwarded to the Commission for initial review for publication.

10A NCAC 27G .0504 – Proposed Amendment of Client Rights Committee Rule

Stuart Berde, NC MH/DD/SAS Team Leader, Customer Service and Community Rights Team, Advocacy and Customer Service Section, presented the proposed amendment of the Client Rights Committee Rule. This rule was targeted for amendment by the Commission during its retreat. This rule amends the current Client Rights Committee rule, specifies LME Board requirements to oversee the committees and LME/provider committee responsibilities. This is a Commission rule and presented to the Rules Committee for approval and a recommendation to the full Commission for publication of the proposed rule.

Bob Hedrick, Ex-Officio Committee member, directed the committee members to a handout depicting the NC Providers Council's comments on the proposed amendment to the rule. Mr. Hedrick stated that the Council supports oversight of clients' rights. Mr. Hedrick commented that (1) there should not be a separate committee for quality assurance as the provider agency should monitor its own provision of quality services and (2) each provider needs its own client rights committee and opined that if a provider is too small to have its own internal committee, it is too

small to be in business. Mr. Hedrick also noted that other options are available which should allow a provider to have its own clients rights committee or a joint committee with another agency.

Peggy Balak, Ex-Officio Committee member, expressed concern regarding the conflict inherent in allowing LMEs and provider agencies to share a client rights committee. Specifically, she stated that LMEs have management, oversight, and monitoring responsibilities for provider agencies which could conflict where they shared a client rights committee with a provider. Ms. Balak stated that in this system they are looking for standardization and a distinction in the role and responsibility of a LME and provider. Ms. Balak also stated that there needs to be a separate rule for the client rights protection, roles and responsibilities of the managing entities and the client rights roles and responsibilities of the provider organization, regardless of the size. If the rules were separated it would make it easier to follow and to delineate roles and responsibilities of each party.

Mr. Berde responded that the statute requires that area/authority county programs have a Client Rights Committee. However, he added that the rule is written to allow providers a choice of using the LME's Client Rights Committee, joining with another provider to create a committee or developing its own committee.

Ann Forbes, Commission member, stated that the LME cannot be a part of the providers' committee for client rights. This should be the providers' role and the LME, as a management entity, should get the reports from the providers.

Sally Cameron, Ex-Officio Committee member, stated that the rules were not clear to her and the Provider Relations Leadership Forum. Ms. Cameron further stated that the group would like to see separate rules. There was also a lot of concern regarding the use of the term "quality assurance". She recommended that "quality assurance" be removed from the name of the Client Rights Committee.

Ann Rodriguez, NC Council of Community Programs, supported the NC Provider Council and Sally Cameron's suggestion. The Council would support amendment of this rule if it separated the LME/provider rules and responsibilities.

Anna Scheyett, Co-Chair, Rules Committee, indicated that the amendment, as proposed, is complicated. She opined that there should be a separation of LME and provider functions and indicated that there may be client rights issues involved in Screening, Triage, and Referral. Dr. Scheyett questioned where in the rules it stated that each provider *shall* have a client rights committee. Dr. Scheyett also pointed out the need to look at the timeframes and expressed her concern about the committee membership.

Mr. McElroy stated that there had been enough issues of concern raised such that the committee should not act on the Client Rights Rule at this time. Mr. McElroy asked Mr. Berde and DMH/DD/SAS staff to work with Bob Hedrick, Peggy Balak, Sally Cameron, Deby Dihoff, Yvonne Copeland and Martha Brock, or her designee, to discuss the various issues and bring recommendations to the Rules Committee meeting in January 2008. Mr. McElroy further stated that if the Division staff and the workgroup could not agree both the Division staff and the workgroup should bring separate versions of the rules to the January meeting. At that time, the Rules Committee will make the decision between the staff's version and the workgroup's version of the proposed amendment. Peggy Balak was assigned by Mr. McElroy to chair the workgroup and receive comments.

Upon motion, second and unanimous vote the Rules Committee approved the recommendation that the Division staff and appointed members of the Rules Committee form a workgroup, comprised of a consumer representative, and bring the revised proposed amendment of 10A NCAC 27G .0504 to the January 16, 2008 meeting of the Rules Committee for review.

10A NCAC 26D .0101 -.0103, .0507, .0703, .1001 - .1001 & .1004 – Proposed Amendment of Criminal Justice Rules

Martha Lamb, NC MH/DD/SAS Justice Systems Innovations Team, Community Policy Management Section, presented the proposed amendment of Criminal Justice rules. She stated that the proposed amendment to the rules were to update and simplify the rules, make them more consistent with the National Commission on Correctional Health Care standards to which the Division of Prisons works to adhere, and reflect more closely standards for managed care companies. The rules were also reviewed based on the Commission's prioritization of this area during its strategic planning retreat.

This is a Commission rule and presented to the Rules Committee for approval of a recommendation to the full Commission for publication of the proposed rule.

Ms. Cameron questioned the removal of psychiatric nurse from the definitions. A second concern was the change in the social work definition from a professional receiving a masters from an accredited social work program to a bachelors level person, not necessarily with a degree in social work. The third concern was associated with not limiting the definition of "clinician" to psychiatrist, physician, psychologist or licensed clinical social worker. There are other licensed mental health professionals and this needs to be clarified and the appropriate license categories used for consistency.

Larry Pittman, Ex-Officio Committee member, asked that he have some clarification and assurance that what is being discussed now would not remove the capacity of a certified substance abuse counselor or licensed clinical addictions specialist from being recognized as a qualified professional within the realm of substance abuse. Ms. Lamb stated that this was not the intent.

Mr. McElroy asked Ms. Cameron if there was a term to use in identifying licensed professionals rather than listing each one individually. Ms. Cameron responded that there was not.

Mr. McElroy questioned Mrs. Lamb regarding the staff's position on expanding the definition of "clinician" to include all of the licensed positions. Mrs. Lamb stated that her thought was that it is within the prisons' purview.

Dr. Scheyett stated that the LP, QP, AP rules would be reviewed by the Rules Committee in January and perhaps there can be some collaboration so that there is parallel language in both sets of rules. Dr. Scheyett's concern was that if the committee amends the rules now, it will have to rewrite the rule if it differs substantially from those being reviewed in January. She further recommended that the committee give Ms. Lamb their feedback and request her to bring the rule back to the Rules Committee in January 2008.

Deby Dihoff, Ex-Office Committee member, stated that she had a number of concerns regarding issues not addressed in the rule such as screening at intake, ensuring that people with mental illnesses or developmental disabilities are properly identified and receive appropriate treatment, and coordination with community care at release.

Karen Salacki stated that the North Carolina Counselor Membership had some concerns regarding the language in the rule being somewhat outdated. Even though there was intent to include developmental disabilities in some of the rules, there are references to mental retardation in other rules that should be removed. There is also the reference to the word “client” instead of “consumer.” She further added that person centered planning should be used instead of treatment plan and rehabilitation plan. Lastly, the use of the definition for a LME should be considered instead of the definition area/authority or county program.

Mr. McElroy made a motion for the Committee not to act on this rule and that the Division staff consult with members of the Rules Committee (voting members and Ex-Officio Committee members) to receive input and present the revised amendments of the rule at the Rules Committee meeting at the January 2008 meeting. Mr. McElroy asked the Division staff to work with the Rules Committee members to develop a rule incorporating the comments made by the committee and ex-officio committee members. Mr. McElroy further stated that if an agreement can not be made, then staff should develop their version and the Rules Committee can develop a separate version for consideration at the next meeting. Mr. McElroy asked Dr. Scheyett to work with the Rules Committee members on this assignment.

Upon motion, second and unanimous vote the Rules Committee approved the recommendation that the Division staff work with the Rules Committee on the proposed amendment of the Criminal Justice rules to incorporate comments from the meeting and bring back to the January 16, 2008 meeting for review.

10A NCAC 26C .0700 – Proposed Adoption of Provider Endorsement Rules

Mabel McGlothlen, NC DMH/DD/SAS, LME Systems Performance Team, Community Policy Management Section, presented the proposed adoption of Provider Endorsement Rules. These proposed rules establish requirements for endorsement of provider organizations who seek to provide mh/dd/sa services. Provider endorsement is intended to insure that providers of mh/dd/sa services are in compliance with state and federal laws and regulations in order to provide services in a manner consistent with the DMH/DD/SA State Reform Plan. It provides the LMEs with objective criteria to determine the competency and quality of providers of Medicaid services. Ms. McGlothlen stated that this is a Secretary rule and presented for information and comment. Therefore, no action is required.

The following questions and comments were raised by the members of the Rules Committee:

- whether the provider would be allowed to continue providing services while the appeals process is underway
- whether retroactive payment would be required if the appeal is upheld
- what provisions would be made for individuals potentially eligible for Medicaid if provider endorsement was not approved or was withdrawn
- the difficulty imposing the provider endorsement process, as outlined, over existing Community Alternatives Program for Persons with Mental Retardation and other Developmental Disabilities (CAP/MRDD) providers because there is a whole array of services within the waiver

Peggy Balak opined that adoption of the proposed ruled should be suspended as the Provider Endorsement policy is evolving and subject to revision. Diane Pomper, Assistant Attorney General, expressed concern regarding the need for adoption of the rule in lieu of the policy partly in light of the difficulty defending policy decisions at the Office of Administrative Hearings.

Dr. Scheyett indicated that recent legislation amended §122C-114 of the North Carolina General Statutes and gave the Commission for MH/DD/SAS the authority to write rule governing Provider Endorsement.

Mr. McElroy asked that Diane Pomper advise staff and the Commission regarding whether the Provider Endorsement Rule was a Commission rule. Mr. McElroy stated that if it was a Commission rule it needed to be brought back as a Commission Rule and recommended that consideration of the proposed rule be suspended until its authority is clarified.

Upon motion, second and unanimous vote the Rules Committee agreed that the Provider Endorsement rule be brought back to the Committee as a Commission Rule if it is determined that the Commission has authority for the subject matter of the proposed rule.

Floyd McCullough, Chair, Rules Committee announced that Anna Scheyett had received her doctorate degree and asked that everyone congratulate her on this accomplishment.

Steven Hairston, NC MH/DD/SAS, Section Chief, announced that the Advisory Committee would be meeting the next day to work on the draft "Workforce Development Initiative Report". Mr. Hairston asked that the members of the Rules Committee who had comments, concerns or issues, submit written remarks to Marta T. Hester and Andrea Borden, Division staff members at the conclusion of the Rules Committee meeting.

Denise Baker, DMH/DD/SAS, Division Affairs Team Leader, Operations Support Section, informed the Rules Committee that the locations for the Ethics training had been expanded due to the requirement that the Ethics training must be completed by January 1, 2008 coupled with limited options for taking the training. Ms. Baker further stated that the Division staff would be sending notification to members who missed the previous training.

Public Comment

Paula Cox Fishman addressed concerns regarding the direction of Adult Development Vocational Programs (ADVP). Ms. Fishman asked if the rule regarding ADVP is required with single stream funding and if the Commission had authority to give serious consideration to making sure that ADVP and Sheltered Workshops continue to be an option for people with developmental disabilities, substance abuse disease and mental illness.

There being no further business, the meeting adjourned at 2:00 pm.